IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 22nd OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 12669 of 2007(G)

PETITIONER:

M/S. HEERA CONSTRUCTION PVT. LTD.,
REP. BY A.R.NAIR, GENERAL MANAGER,
HEERA PARK, M.P.APPAN ROAD, VAZHUTHACAUD,
THIRUVANANTHAPURAM.

BY ADV. SRI.ANIL THOMAS(T)
SMT.K.V.RESHMI

RESPONDENTS:

THE CORPORATION OF THIRUVANANTHAPURAM,
REP. BY ITS SECRETARY, THIRUVANANTHAPURAM.

BY ADV. SRI.N.NANDAKUMARA MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.12669/07

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE BUILDING PERMIT DTD. 30-06-04 ISSUED BY THE RESPONDENT.**
EXT.P2 & P2(A)	**TRUE COPY OF THE NOC ISSUED BY THE AIRPORT AUTHORITY OF INDIA AS WELL AS THE FIRE FORCE DEPARTMENT.**
EXT.P3	**TRUE COPY OF THE REPRESENTATION DD. 11-8-06 SUBMITTED BEFORE THE RESPONDENT.**
EXT.P4	**TRUE COPY OF THE NOTICE DTD. 25-10-6 ISSUED BY THE RESPONDENT.**
EXT.P5	**TRUE COPY OF THE REPLY SENT BY THE PETITIONER TO THE RESPONDENT DTD. 28-10-06**
EXT.P6	**TRUE COPY OF THE REMINDER LETTER DTD.28-12-06 SUBMITTED BEFORE THE RESPONDENT.**
EXT.P7	**TRUE COPY OF THE SAID NOTICE DTD. 31-01-07 ISSUED BY THE RESPONDENT.**
EXT.P8	**TRUE COPY OF THE REPLY DTD.22-2-07 SUBMITTED BY THE PETITIONER.**
EXT.P9	**TRUE COPY OF THE NOTICE DTD. 20-03-07 ISSUED BY THE RESPONDENT.**
EXT.P10	**TRUE COPY OF THE REPRESENTATION DTD. 3-4-07 SUBMITTED BEFORE THE RESPONDENT.**
EXT.P11	**TRUE COPY OF THE ORDER DTD. 02-05-07 ISSUED BY THE RESPONDENT.**
EXT.P12	**TRUE COPY OF THE COMMUNICATION ADDRESSED TO THE SECRETARY TO GOVT., LOCAL SELF GOVERNMENT DEPT. DTD. 12-07-05 WHICH WAS OBTAINED BY GIVING APPLICATION UNDER THE RIGHT TO INFORMATION ACT.**
EXT.P13	**TRUE COPY OF THE COPY OF THE MINUTES OF THE ROAD WIDENING COMMITTEE DTD. 15-04-04 WHICH WAS OBTAINED IN ACCORDANCE WITH THE PROVISIONS OF THE RIGHT TO INFORMATION ACT.**
EXT.P14	**TRUE COPY OF THE LIST OF THE NUMBER OF PERSONS FOR WHOM THE APARTMENTS HAVE BEEN SOLD AND THE PERSONS WHO HAD ALREADY OCCUPIED.**

EXT.P15	**TRUE COPY OF THE JUDGMENT OF THIS COURT IN W.P.C.NO.7443/06**
EXT.P16	**TRYE COPY OF THE ORDER IN SLP CIVIL NO.9835/2006 DTD. 07-07-06**
EXT.P17	**TRUE COPY OF THE VOUCHERS ISSUED BY THE WATER TRANSPORT AGENCIES**
EXT.P18	**TRUE COPY OF THE LAWYER NOTICE DTD. 21-06-07**
EXT.P19	**ORIGINAL OF THE PHOTOGRAPH OF THE BUILDING CONSTRUCTED BY THE PETITIONER.**
EXT.P20	**TRUE COPY OF THE ORDER DTD. 4-8-07 ISSUED BY THE RESPONDENT.**

RESPONDENT'S EXHIBITS

ANNEXURE A	**THE PHOTOSTAT COPY OF THE LETTER DTD. 13-12-06 ISSUED BY THE UNDER SECRETARY, PRINCIPAL SECRETARY TO GOVT. TO THE SECRETARY, THIRUVANANTHAPURAM CORPORATION.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(c).No.12669 OF 2007

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Dated this the 22nd day of October, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is a construction agency. It came to be issued with Ext.P1 building permit dated 30/06/2004. The building permit was granted after taking into consideration the decision of the special committee constituted under Rule 85 of the Kerala Municipality Building Rules 1999 which considered the request of the petitioner to surrender the land for widening as per Chapter XI of the Rule. It is stated that the decision by the special committee was arrived at only after elaborately considering the proposal of the petitioner in consonance with Rule 82 of the Kerala Municipality Building Rules as it was in existence at the relevant point of time. The Airport authority and also the Fire Force department has given Ext.P2 and Exts.P2(a) N.O.C. Petitioner carried out the construction without violating any of the building Rules and also the conditions in the permit, it is stated. The construction was completed by 17/04/2006. The completion

report was given on the same day. Respondent has duly forwarded the request for getting final NOC after thoroughly examining the the construction works and also after getting favourable report from the Assistant Town Planning Officer and the Town Planning officer. Petitioner had applied for final NOC from the department. On 25/06/2006 petitioner had obtained the final NOC from the Fire Force Department and the same was forwarded to the Corporation Office along with necessary drawings. Petitioner's building has got 26 apartments. All the apartments have been sold. It is pointed out that the persons who have purchased the apartments have been faced with practical difficulties as they are not provided with T.C.numbers which could be obtained only on production of occupancy certificate. Petitioner submitted Ext.P3 representation seeking issuance of the occupancy certificate as contemplated under Rule 22(3) of the K.M.B.R. While so, petitioner was served with Ext.P4 notice dated 25/10/2006 informing that the application for occupancy certificate could be considered only after rectifying the defects noted. Petitioner sent Ext.P5 reply that the so called deviation mentioned in Ext.P4 has been rectified. Petitioner sent Ext.P6 reminder letter dated 28-12-06. Ext.P7 is the notice asking the petitioner to show cause as to why Ext.P1 permit should not

be cancelled within three days. Petitioner submitted Ext.P8 reply. Ext.P9 is the notice calling upon the petitioner for hearing. Ext.P10 is the detailed representation filed by the petitioner on 03/04/2007 seeking issuance of occupancy certificate. Ext.P11 is the order passed by the respondent. Ext.P12 is produced by the petitioner to show that the secretary of the respondent Corporation had addressed the Government Secretary in support of the petitioner. Ext.P13 is the true copy of the minutes of the road widening committee dated 15/04/2004. Ext.P14 is the list of occupants. Ext.P15 is the judgment of the Division Bench which repelled the writ petition filed against the petitioner and that was confirmed by Ext.P16. Petitioner challenges Ext.P11 as illegal, arbitrary or unsustainable. Petitioner seeks a direction to issue occupancy certificate as requested by the petitioner in Exts.P3 and P10 representations.

2. Respondent has filed a counter affidavit to which petitioner has filed a reply affidavit. I heard learned counsel for the parties.

3. Sri.Anil Thomas, learned counsel for the petitioner would submit that there is a mandatory duty on the part of the respondent to issue the occupancy certificate having regard to the facts of this case. According to the petitioner, the building

was constructed in accordance with the permit and in accordance with the Rules. The construction was over in April 2006. The completion report was given on 17/04/2006. He would submit that in terms of Rule 22(3) it is the duty on the part of the Secretary on receipt of the completion certificate and on being satisfied that the construction is in terms of the permit to issue the occupancy certificate not later than 15 days from the date of receipt of the completion certificate. He would point out that physical verification was carried out and there is no deviation from the permit or any violation of the building Rules. Final NOC was also given by the fire department. He would also point out that in fact the petitioner is entitled to proceed in terms of the proviso to sub Rule 3 of Rule 23 to proceed as if occupancy certificate has been duly issued to him and therefore this is a case where in law he could argue that the occupancy certificate has been issued. It is in such circumstances when the entire construction was over and the apartments were sold to various persons, apparently based on Annexure A produced along with the counter affidavit that Ext.P7 notice was issued followed by Ext.P11 order. He would submit that there cannot be any unfettered discretion vested in any statutory authority. He would also submit that the statutory authority has to exercise the

discretion vested in it without dictation. Petitioner had submitted Ext.P8 reply to Ext.P7 notice. I find that in Ext.P8 there is a reference made to a letter dated 11/08/2006 which admittedly is Ext.P3. Petitioner also submitted Ext.P10 representation seeking grant of occupancy certificate. He would also press the principle of proportionality in support of his case. Petitioner pressed into service the stand of the Secretary before the Government as reflected in Ext.P12. He would point out that this is a case where there is no violation at all of any of the building Rules. He would of course contend that the interpretation placed on Rule 85(3) of the Building Rules is not sustainable. Rule 85(3) deals with quorum at the relevant time when the decision in question was taken. The Rule read s follows:

"Quorum for the meeting shall be three including the Convenor and the Chair-Person". He would contend that there were three persons who participated and it is sufficient and therefore there is quorum. It is submitted that in fact 39 sq.metres. land was indeed surrendered. He would submit that the absence of the Secretary at any rate would not have any bearing on the deliberations which lead to the issuance of the permit and particularly in circumstances where there is no breach of any of the building Rules or of the permit and there is no

warrant for cancelling the permit.

4. I heard learned counsel for the respondent Sri.N.Nandakumara Menon. He would submit that the persons participated in the meeting did not include the Secretary of the Corporation as it is mandatory. He would reiterate the contention that to constitute the quorum the presence of the Secretary is indispensable. He would point out that persons who participated in the meeting were The Secretary (TRIDA), The Regional Town Planner and the Mayor. It is submitted that Ext.P11 was issued on the basis of Annexure A letter of the Government.

5. The first question to be considered is whether I should accept the case of the petitioner that the absence of the Secretary will not result in there being no quorum within the meaning of Rule 85(3). Going by the wording of Rule 85 (3) it would appear to me that quorum can exist only when the Secretary is also present. But even proceeding on that basis the question which arises is whether that is sufficient to cancel the permit. The wording of Rule 16 of the Building Rules no doubt do not appear to place any limitation as to when a permit given can be cancelled. But it would appear that this is a case where the permit was issued on 30/06/2004 and construction was proceeded with on the basis of the permission. The construction was

completed in April 2006 and completion report was also given. Petitioners have set up a clear case that 23 apartments were sold to the third parties and all that remained was the issuance of the occupancy certificate which according to the petitioners they are entitled in law under Rule 22(3) within the period mentioned therein upon furnishing the completion certificate. Upon the expiry of the period in law they are deemed to be in possession of the occupancy certificate. Action is purported to be taken on the basis of the communication received from the Government. I would think that Rule 16 vests a power with the statutory functionary namely the Secretary. It is the Secretary who has to take a decision independently by applying his mind to the facts of the case as to whether in the facts of the case cancellation of the permit is warranted for the reason that the Committee which gave the permit under Rule 85 of the Building Rules was bereft of power for the reason that there is no quorum within the meaning of Rule 85. As already noted, the entire construction was completed and according to the petitioners all the apartments were sold out to third parties and thus there is supervening equity also. At such stage only for the reason that there is no quorum in the committee in terms of Rule 85(3) the Secretary should have applied his mind independently and taken a decision as to

whether it requires action under Rule 16 to cancel the permit. It is to be noted that petitioner has a case that petitioner having no control over the meeting of the committee and for the reason that Secretary did not participate to visit them with the consequences under Rule 16 would be totally unjustifiable.

I feel that this is a matter which definitely requires reconsideration and the Secretary has to apply his mind and take a decision independently as required in law. Accordingly, I quash Ext.P11 and direct the respondent to consider and take a decision in the matter in accordance with law, within a period of three weeks from the date of receipt of a copy of this judgment. If the Secretary finds that the permit is not to be cancelled, he shall within a period of one week from the date of the decision issue the occupancy certificate under Rule 22 to the petitioner.

(K.M.JOSEPH, JUDGE)

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